

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Alicia McGowan and Joshua McGowan,

Civil No. 16-cv-1919 (SRN/HB)

Plaintiffs,

v.

Experian Information Solutions, Inc.,

**REPORT AND
RECOMMENDATION**

Defendant.

Alicia McGowan and Joshua McGowan, 24464 Lyons St. NE, Stacy, MN 55079, pro se

Tamara E. Fraser, Williams, Williams, Rattner & Plunkett, P.C., 380 N. Old Woodward Ave., Suite 300, Birmingham, MI 48009, and Gregory J. Myers, Lockridge Grindel Nauen PLLP, 100 Washington Ave. S, Suite 2200, Minneapolis, MN 55401, for Defendant Experian Information Solutions, Inc.

HILDY BOWBEER, United States Magistrate Judge

This matter is before the Court on Defendant Experian Information Solutions, Inc.'s Motion to Dismiss for Failure to Prosecute (ECF No. 33). The matter has been referred to the undersigned for a Report and Recommendation under 28 U.S.C. § 636 and District of Minnesota Local Rule 72.1(a) (ECF No. 34). For the reasons set forth below, the Court recommends granting the motion.

I. Background

Plaintiffs filed individual lawsuits against Experian in July 2016 alleging violations of the Fair Credit Reporting Act. Plaintiffs' lawsuits were consolidated on

August 25, 2016 (ECF No. 18). A Pretrial Scheduling Order was issued on September 8, 2016 (ECF No. 22). Defendant has reported having difficulty getting Plaintiffs to respond to written discovery requests and scheduling Plaintiffs' depositions.

On December 12, 2016, due to their inability to reach Plaintiffs in order to respond to the above requests, Marcus Hinnenthal and Blake Bauer, Plaintiffs' counsel of record, filed a Motion to Withdraw as Counsel of Record without Substitution (ECF No. 27). On January 3, 2017, a hearing was conducted on counsel's motion and neither Plaintiff appeared. During the hearing, the undersigned determined that good cause existed and entered an Order allowing prior Plaintiffs' counsel to withdraw (ECF No. 31). The January 3, 2017, Order further provided that Plaintiffs had thirty (30) days to have new counsel appear as counsel of record or to notify the Court in writing that Plaintiffs intended to proceed pro se. The January 3, 2017, Order explicitly stated that, "If Plaintiffs do not contact the Court within thirty days, the Court will entertain a motion by Defendant to dismiss this case for failure to prosecute." More than thirty (30) days have passed since entry of the Order and no new attorney has appeared nor have Plaintiffs filed anything in writing indicating that they intend to proceed pro se. Plaintiffs' refusal to respond to their prior counsel and Plaintiffs' refusal to comply with this Court's February 2, 2017, deadline demonstrates Plaintiffs' lack of intent to proceed with their case.

RECOMMENDATION

Based upon the foregoing and all of the files, records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Defendant Experian Information Solutions, Inc.'s Motion to Dismiss for Failure to Prosecute (ECF No. 33), be **GRANTED**; and
2. This action be summarily **DISMISSED** without prejudice.

Dated: February 8, 2017

s/ Hildy Bowbeer

HILDY BOWBEER

United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), a party may file and serve specific written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the Report and Recommendation. A party may respond to the objections within fourteen days after being served with a copy of the objections. D. Minn. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c)(1).

Under Advisement Date: This Report and Recommendation will be considered under advisement fourteen days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) fourteen days after the objections are filed, or (2) from the date a timely response is filed.